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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 18 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

TO: Chief, Wireless Telecommunications Bureau

**Phase Two Comments Of
Diamond Page Partnerships,
AmericaOne and Affiliated Entities**

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These Comments, filed by Diamond Page Partnerships, AmericaOne, and affiliated entities (collectively the "Filers") address the phase two, or future regulatory issues raised by the above-captioned Notice of Proposed Rule Making, FCC 96-52, rel. February 9, 1996 ("Notice"). Filers, each of which is a start-up entity, have affiliated with each other for the purpose of establishing a virtual nationwide PCP paging network, operating on exclusive channels in the 929 MHz band. Some 128 licenses have already been granted to Filers, and some 143 applications remain in pending status.

Filers have already submitted initial comments on the interim processing portion of this docket.¹ With respect to the second phase of the proceeding, Filers support the Commission's intent to substitute geographic licensing for site-specific licensing, and to

¹ Initial Comments of Diamond Page Partnerships, AmericaOne and affiliated entities, dated March 1, 1996.

alter the buildout obligations to provide a longer period of time in which to construct a proposed system and a population-based method for meeting due diligence obligations to serve the designated area. These Commission proposals should serve the public interest and will make it easier for new entrants to participate in the paging industry. However, Filers wish to emphasize the desirability of modifying somewhat the provisions for participation by small companies in the auctioning of the 929 MHz PCP paging frequencies.

As indicated in their initial comments, Filers, who are a group of start-up entities, have already committed substantial resources to their plan for a nationwide paging service operating on regional licenses accorded exclusivity under existing provisions of the rules. Approximately \$ 1 million has already been expended in this effort as well as substantial amounts of time and effort. The Commission's proposals to alter the regulatory regime for the 929 MHz PCP service represent a sharp break with the Commission's prior regulations -- the basis on which Filers initiated their project. The 929 MHz PCP exclusivity policy has been in effect only since October of 1993.² Nevertheless, Filers remain enthusiastic about the prospects for a low-cost widely-distributed nationwide paging system.

However, the Commission's proposal for small businesses ("designated entities") to participate in the auction is not sufficiently focussed to assure that entities like Filers will be able to participate. Essentially, an entity with revenues in the last three years averaging less than \$3 million would receive a 15% credit (Notice, pars. 127-9). The Notice also contemplates allowing outside investors to hold up to 25% without the entity

² Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, Report and Order, PR Docket No. 93-35, 8 FCC Rcd 8318 (1993).

losing its preference -- but only if there is a "control group"(par. 130). The Notice further proposes to allow the small business to pay its winning auction bid in installments over the ten-year license term, with interest to be fixed at 2.5 percentage points above the ten-year U.S. Treasury obligation. For the smallest entity the payments would be interest-free for the first three years (Notice, par. 132). Finally, the Notice proposes to reduce to 5% of the bid the payment required immediately after winning an auction, with another 5% to be due just before the license is actually issued (Notice, par. 133).

Filers believe that these special provisions for small businesses, while helpful, do not go far enough. Although the capital costs for paging systems are more modest than those applicable to, e.g. PCS, nevertheless the concessionary terms proposed fail to fully reflect the historical facts of the paging industry. As the Commission is aware, the paging industry, with a few and relatively recent exceptions, has been a mom-and-pop business. Aggregating capital for numerous auctions is inherently difficult for such entrepreneurs and the 25% maximum limit on outside participation will also chill capital formation through the infusion of funds from larger entities.

In its Notice, the Commission emphasizes the rapid growth of paging services and the prospects for continued rapid growth (Notice, pars. 5-8). All the factors cited there by the Commission are valid, but the central role of demand elasticity for paging services deserves special mention. Filers have prepared a marketing plan which emphasizes a low-cost, mass-marketed paging service which may be able to deliver service for as little as \$4 per month including a comparably inexpensive pager which can be purchased at mass market retail outlets. If Filers can successfully implement this plan paging should become as ubiquitous as inexpensive pocket calculators; indeed, at such price levels the market should be essentially unlimited and paging customers may be numbered in the

hundreds of millions within a few years. However, the economics of this plan are critically dependent on initiation of service on a flash-cut basis, with simultaneous rollout in many markets and thousands of retail outlets. These conditions in turn impose high initial capital costs on a nationwide basis.

Filers have been seeking capital in the range of approximately \$50 million for their nationwide service. To this must be added the costs of participating in auctions and making payment on winning bids. Filers have found it difficult to raise such large sums for a highly competitive industry and anticipate continuing difficulty accessing capital markets. Filers therefore urge the Commission to raise the permitted outside participation to 49%; to provide a 25% discount on the winning bid, and to permit a downpayment of only 5%, with 95% of the winning bid deferred and amortized over a 10 year period at the applicable treasury instrument rate plus one percent. On behalf of Filers the undersigned, who has many years experience in finance and the business development and has first hand experience with the integration of a potential new competitor into an existing industry, has devoted substantial time and energy over the last year to the search for investment funds to construct and operate the proposed nationwide paging network. Significant effort, time and money have been expended toward the development and implementation of the proposed system. Contacts have included many communications and noncommunications entities whose investment in the Filers' proposed system would constitute new competitive entry. Although an individual 929 MHz paging system costs only hundreds of thousands of dollars to implement and operate, the Filers' plan, which contemplates hundreds of coordinated systems, demands initial investment on a scale which is not typical of the paging industry.

Based on these prior discussions, and meetings held since the proposal to auction PCP licenses was made public, Filers believe the alterations proposed herein to the

designated entity provisions in the auction rules will better implement the statutory mandate of section 309(j)(4)(A) by encouraging small business participation in the 929 MHz PCP paging industry, while still assuring that the auction methodology is followed. At the same time, as proposed to be modified herein the auction of future paging licenses will generate a flow of funds to the U.S. treasury in future years based on the winning bidders' use of a public resource. Finally, and most importantly, by encouraging the widest possible participation by creative entrepreneurs, this approach maximizes the opportunity for the U.S. public to make use of innovative low-cost paging services on a nearly universal basis.

It is also of crucial importance that any new rules the Commission adopts for the paging industry be kept in place over a period of time sufficient to permit the private market to develop and be able to rely upon a multi-year planning horizon.

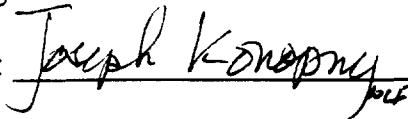
Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Maria Coll, a secretary in the law firm of Sullivan & Worcester LLP, hereby certify that on this 18th day of March, 1996, a copy of the foregoing "Phase Two Comments Of Diamond Page Partnerships, AmericaOne and Affiliated Entities" was sent by first class U.S. Mail, postage prepaid, to the following:

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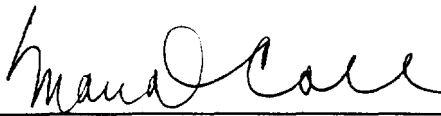
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